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NO. 83-663

IN THE

Supreme Court of the United States

October Term, 1983

THE STATE OF NEW YORK; and JAMES L. LAROCCA, as Commissioner of the Department of Transportation of the State of New York,

Petitioners,

—against—

THE UNITED STATES OF AMERICA,

Respondent,

and

BEECHCRAFT EAST, INC.,

Respondent.

JAMES L. LAROCCA, as Commissioner of the Department of Transportation of the State of New York,

Petitioner,

—against—

AIRCRAFT OWNERS AND PILOTS ASSOCIATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT BEECHCRAFT EAST, INC.

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AIRCRAFT OWNERS AND PILOTS ASSOCIATION,

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BRIEF FOR BEECHCRAFT EAST, INC. IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1a-6a) is reported at 708 F.2d 92. The opinion of the District Court (Pet. App. 9a-30a) is reported at 552 F.Supp. 255.

JURISDICTION

The judgment of the Court of Appeals was entered on May 26, 1983 (Pet. App. 33a-34a). A petition for rehearing was denied on July 21, 1983 (Pet. App. 35a-36a). The petition for a writ of

certiorari was filed on October 19, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

On June 23, 1982, the New York State Legislature enacted a statute which purports to: (1) divest Metropolitan Transportation Authority (MTA) of its ownership of Republic Airport (Republic), located in Suffolk County, New York, (2) vest ownership and operational responsibilities over Republic in the State's Department of Transportation (DOT), (3) impose a mandatory 11:00 p.m. to 7:00 a.m. blanket curfew at Republic, except for emergency use, and (4) vest exclusively in a citizen's commission (Republic Airport Commission) the power to modify the curfew after notice and hearing. Pet. App. 16a-18a.

On September 17, 1982, the United States commenced an action against the State of New York (State) and its Commissioner of Transportation to have the Court declare unconstitutional those portions of the State law which purports to transfer ownership of Republic to New York State and which imposed a blanket prohibition on the use of the airport, except in case of emergency, between the hours of 11:00 p.m. and 7:00 a.m. The United States challenged the statute, on the basis of the contract clause, Article I, Section 10, the Supremacy Clause, Article VI, Clause 1, and the Commerce Clause, Article I, Section 8, cl. 3 of the United States Constitution. Pet. App. 10a-11a, 18a.

Beechcraft East, Inc. (Beechcraft) is a corporation organized and existing under the laws of the State of Kansas and maintains its principal office at Republic. On October 1, 1972, Beechcraft and MTA entered into an agreement whereby MTA leased to Beechcraft certain land and facilities at Republic for the purpose of conducting a general aviation facility to provide, among other

things, all aviation related services as well as the sale, purchase, rental and lease of aircraft. As a result of that agreement, Beechcraft has expended large sums of money in the development of its general aviation facility, purchased properties and equipment necessary to perform its obligations pursuant to the agreement, and has entered into agreements with owners and lessees of aircraft, based at Republic, wherein Beechcraft has agreed to provide twenty-four hour service and flights on demand, as well as cargo transfer and emergency medical flights.

On September 22, 1982, Beechcraft made a motion in the United States District Court for the Northern District for a preliminary injunction against the curfew, pending the trial and determination of the action and for leave to intervene in the action commenced by the United States. Beechcraft alleged that as a result of the blanket curfew twenty-seven (27) of its customers gave notice of their intention to cancel their agreements with Beechcraft and relocate to other airports. In support of its motion Beechcraft filed its complaint, affidavit of Allen K. Pepin, Beechcraft's Vice President and General Manager, affidavit of James J. von Oiste, Beechcraft's attorney, and the twenty-seven (27) letters of cancellation from its customers. Pet. App. 19a, 21a-22a.

The State did not request an evidentiary hearing nor did it complain or object, formally or otherwise, to have the issuance of the preliminary injunction decided on affidavits and argument of counsel.

In opposition to Beechcraft's motion for the preliminary injunction the State submitted the affidavit of Clarence Cook, Director of the Aviation Bureau of the Division of Highways, Aviation, and Ports of New York State.

Beechcraft's motion was returnable on October 1, 1982. After

hearing argument of counsel, in open court, both for and against the motion, the District Court found that Beechcraft had sustained its burden with respect to its application and granted the motion.

In a Memorandum-Decision and Order, dated October 14, 1982, the District Court granted the preliminary injunction. With respect to the likelihood of success on the merits, the court concluded that the curfew conflicted with federal law governing aviation and therefore was invalid under the Supremacy Clause. Pet. App. 23a-30a. In addition, the court found that Beechcraft would suffer an "'actual and imminent'" business loss as a result of the curfew (id. at 22a) (citation omitted) and had no adequate remedy at law because the Eleventh Amendment "precludes Beechcraft from obtaining compensatory damages here" Pet. App. 22a n.9. Following discovery, the State moved for an Order vacating the District Court's Order of preliminary injunction, or, alternatively, setting down a date for the court to conduct an evidentiary hearing. The State did not contend that the lower court erred in determining a likelihood that Beechcraft would succeed on the merits. Instead, the State limited its motion to the sole contention that insofar as Beechcraft suffers economic loss from the blanket curfew, it has an adequate remedy at law pursuant to Section 8 and 9(2) of the New York Court of Claims Act.

The court of appeals affirmed the preliminary injunction, Pet. App. 1a-6a. Petitioners did not challenge Beechcraft's showing of a likelihood of success on the merits, and instead limited the appeal to the issue of irreparable injury. The court of appeals rejected petitioner's argument that state law furnished an adequate legal remedy, holding that "in deciding whether a federal plaintiff has an available remedy at law that would make injunctive relief unavailable, federal courts may consider only the available federal legal remedies" (id. at 4a).

REASONS WHY THE WRIT SHOULD BE DENIED

LACK OF AN ADEQUATE REMEDY AT LAW IN THE FEDERAL COURT WAS SUFFICIENT TO JUSTIFY INJUNCTIVE RELIEF.

Petitioners contend that Beechcraft had an adequate remedy at law in The Court of Claims of the State of New York and that the District Court of the United States, sitting in equity, was therefore without jurisdiction.[1] This is an incorrect view of the equity jurisdiction of the District Court and was properly rejected by the Court of Appeals for the Second Circuit.

It is well settled that an adquate remedy at law, as a bar to equitable relief in the federal courts, refers to a remedy on the law side of the federal courts not the state courts. *Petroleum Exploration, Inc. v. Commissioner*, 304 U.S. 209, 217 (1938); *Di Giovanni v. Camden Insurance Association*, 296 U.S. 64, 69 (1935); *Henrietta Mills v. Rutherford County*, 281 U.S. 121, 126 (1930); *Risty v. Chicago, Rock Island & Pacific Railway Company*, 270 U.S. 378, 388 (1936).

After finding an inadequacy of remedy on the law side of its court, because the Eleventh Amendment bars suits for damages by private plaintiffs against a state in federal court, the District Court correctly applied the well established principles and rules of equity and granted Beechcraft's motion for a preliminary injunction.

[1]It was Beechcraft's contention that even if it could sue New York in the State Court of Claims, its remedy would not be adquate because Beechcraft's damages were continuing and unless the State's curfew was enjoined Beechcraft's business would be destroyed. Beechcraft also argued that since this was an action based solely upon the unconstitutional act of the New York State Legislature acting in its sovereign capacity, the Court of Claims of the State of New York would not have jurisdiction of the subject matter of the action.

The cases relied upon by the petitioners are clearly distinguishable from this case. This Court has long recognized that the federal courts, in the exercise of the sound discretion which has traditionally guided courts of equity in granting or withholding the extraordinary relief which they may afford, will not ordinarily, restrain state officers from collecting state taxes where state law affords an adequate remedy to the tax payer. *Matthews v. Rodgers*, 284 U.S. 521 (1932). Nor will this Court interfere with an ongoing state criminal proceeding. *Younger v. Harris*, 401 U.S. 37 (1971). This withholding of extraordinary relief by courts having authority to give it is not a denial of the jurisdiction which Congress has conferred on the federal courts, or of the settled rule that the measure of inadequacy of the plaintiff's legal remedy is the legal remedy afforded by the federal not the state courts. *Stratton v. St. Louis S.W. Ry Co.*, 284 U.S. 530, 533-34 (1932); *Di Giovanni v. Camden Insurance Association*, 296 U.S. 64, 69 (1935); On the contrary, it is but a recognition that the jurisdiction conferred on the federal courts embraces suits in equity as well as at law, and that a federal court of equity, which may in an appropriate case refuse to give its special protection to private rights when the exercise of its jurisdiction would be prejudicial to the public interest, should stay its hand in the public interest when it reasonably appears that private interests will not suffer. See *Pennsylvania v. Williams*, 294 U.S. 176, 187 (1935) and cases cited.

The issuance of the preliminary injunction was in the District Court's discretion. *Doran v. Salem, Inn, Inc.*, 422 U.S. 922, 931-32 (1975); *Tribwasser & Katz v. American Tel. & Tel. Co.*, 535 F.2d 1358 (2d Cir. 1976); *S.C.M. Corp. v. Xerox Corp.*, 567 F.2d 358, 360 (2d Cir. 1974); *7 J Moore Federal Practice Sec.* 65:04 (2) at 65-47-49 (2d ed 1975).

The District Court was not compelled to grant injunctive relief

solely because the Eleventh Amendment barred Beechcraft's recovery of monetary damages against the State. On the basis of the pleadings, argument of counsel, exhibits and affidavits of the parties, the District Court found that Beechcraft had "demonstrated a business loss that is certainly 'not remote or speculative, but [is] actual and imminent' " (Pet. App. 22a), and that Beechcraft had no remedy at law against the State, in federal court, because of the Eleventh Amendment bar (Pet. App. 21a-22a).[2] The State did not request an evidentiary hearing nor did the State object, formerly or otherwise, to have the issuance of the preliminary injunction decided on affidavits and argument of counsel. Where, as here, the District Court had the benefit of so complete a record and the State failed to request a hearing, the State cannot argue that the District Court abused its discretion in granting injunctive relief.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[2]As of September 11, 1982, the date of Beechcraft's motion for the preliminary injunction, twenty-seven (27) customers gave notice of their intention to cancel their agreements with Beechcraft. As of October 1, 1982, the date when Beechcraft's motion was heard, an additional sixteen (16) cancellations were received. The District Court found "that cancellations continue to be received by Beechcraft on an almost daily basis". The Court noted "There is no requirement in this Circuit that a party wait until near-extinction before moving for a preliminary injunction. The law, like the Constitution, is not a suicide pact."